



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Confined Feeding Operations

LSA Document #09-615

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Description

Establishes new rules for confined feeding operations to meet the requirements of IC 13-18-10. Repeals the existing rules for confined feeding operations in 327 IAC 16.

Citations Affected

327 IAC 16; 327 IAC 19.

Affected Persons

Agricultural producers that engage in beef and dairy cattle farming, hog and pig farming, chicken and chicken egg production, turkey and other poultry production, sheep farming and horse production (NAICS 2007 sector 112) and who meet the statutory definition of a confined feeding operation (IC 13-11-2-40).

Reason(s) for the Rule

In 2008, the U.S. Environmental Protection Agency revised its rules for concentrated animal feeding operations in response to the decision of the 2nd Circuit Court of Appeals in *Waterkeeper Alliance, Inc. v. Environmental Protection Agency*, 399 F.3d 486 (2d Cir. 2005). In 2009, the Indiana General Assembly made significant changes to the laws for confined feeding operations in IC 13-18-10 (P.L. 127-2009). Those changes, combined with changes in the industry, require amendments to the rules for confined feeding operations.

Economic Impact of the Rule

Estimated annual cost of this rule is approximately \$259,130.

Benefits of the Rule

These changes will make Indiana's confined feeding rules consistent with current federal and state law and standards. These changes will ensure the continued protection of human health and the environment in the state of Indiana.

Description of the Rulemaking Project

Indiana has had a CFO program in place since 1971, prior to EPA's National Pollutant Discharge Elimination System (NPDES) program for CAFOs. After the federal rules under the Clean Water Act (CWA) were revised in 2003, the Indiana CFO statutes and rules were revised in 2004 to mesh the federal and state programs. With revisions to the federal rules in 2008, a new opportunity is being presented to reevaluate the state program, make changes that will better align the state and federal rules, and make it clearer what is expected from each. This rulemaking is being done in conjunction with LSA Document #09-213. LSA Document #09-213 is incorporating by reference the new federal NPDES CAFO rules. IDEM is currently planning to have the same effective date for these two rules in order to ensure administrative consistency and, if applicable, a smooth transition from the NPDES permit program to a CFO approval.

In this draft rule, IDEM is proposing to upgrade the requirements for all CFOs through a new rule at 327 IAC 19 that would replace existing rules that IDEM proposed to amend in the first notice of rulemaking published on August 19, 2009. The new rules will be more like the past requirements for large CAFOs that do not discharge and, therefore, are no longer required to have an NPDES permit.



Public Notices

First Notice of Comment Period: August 19, 2009, Indiana Register (DIN: 20090819-IR-327090615FNA)

Second Notice of Comment Period: August 11, 2010, Indiana Register (DIN: 20100811-IR-327090614SNA)

Public Hearing Notice: August 11, 2010, Indiana Register (DIN: 20100811-IR-327090615PHA).

Change of Public Hearing Notice: October 20, 2010, Indiana Register (DIN: 20101020-IR-327090615CHA).

Scheduled Hearings

First Public Hearing: May 11, 2011.

Second Public Hearing: September 14, 2011 (tentative date).

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

This rule is consistent with the federal regulations for confined feeding operations in 40 CFR 122.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with Legislative Services.

Additional Information

Additional information regarding technical aspects of this rulemaking action can be obtained from Mike Dunn, Permits Branch, Office of Land Quality, (317) 232-8736 or (800) 451-6027 (in Indiana).

Additional information regarding procedural aspects of this rulemaking action can be obtained from Steve Mojonnier, Rules Development Branch, Office of Legal Counsel, (317) 233-1655 or (800) 451-6027 (in Indiana).

